



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUG 10 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Sean Fox

Falls Church, VA 22042

RE: MURs 6289, 6362

Dear Mr. Fox:

The Federal Election Commission has considered the allegations contained in the complaint, designated as MUR 6289, you submitted on May 12, 2010. The Commission merged MUR 6289 into MUR 6362.

The Commission found, on the basis of the information provided in the complaint and information provided by respondents, that there is: no reason to believe Jeff Denham violated 2 U.S.C. § 441b(a); no reason to believe Denham for Congress and David Bauer, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441b(a); no reason to believe Remembering the Brave Foundation violated 2 U.S.C. § 441b(a); and no reason to believe that the Picayune Rancheria of the Chukchansi Indians/Chukchansi Tribal Government violated any provisions of the Federal Election Campaign Act of 1971, as amended, ("the Act") or Commission regulations in connection with the allegations in this matter. The Commission considered other allegations contained in the complaint, but was equally divided on whether to find reason to believe that Remembering the Brave Foundation violated 2 U.S.C. §§ 434(f) and 441d. Accordingly, on August 2, 2011, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analyses, which explain the Commission's no reason to believe findings, are enclosed for your information. One or more Statements of Reasons providing a basis for the Commission's decision regarding the other allegations will follow.

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Sean Fox
MURs 6289, 6362
Page 2

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8). If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Blumberg", with a stylized flourish at the end.

Peter G. Blumberg
Assistant General Counsel

Enclosures
Factual and Legal Analyses

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11044301313

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Jeff Denham **MUR:** 6362
Denham for Congress
and David Bauer, in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by two complaints filed with the Federal Election Commission ("the Commission"), one by Sean Fox and another by Tal Cloud and Mike Der Mannuel, Jr., which were designated as MURs 6289 and 6362, respectively. *See* 2 U.S.C. § 437(g)(a)(1). The complaints concern ads broadcast by Remembering the Brave Foundation ("RB"), a section 501(c)(3) charitable organization, to promote a May 28, 2010, benefit concert in support of a program in California to create specialized license plates for families of military personnel killed on active duty. The ads featured Jeff Denham, a California State Senator and a candidate in the primary election for the 19th Congressional District in California, and were disseminated within 30 days of the California Congressional primary election on June 8, 2010. The concert was held at the Chukchansi Gold Resort & Casino.

The complaints in these two matters involve allegations that the radio and television advertisements promoting the concert were electioneering communications that were coordinated with Denham for Congress and David Bauer, in his official capacity as treasurer ("Federal Committee") and were not disclosed to the Federal Election Commission ("the Commission"), in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). Complainants in MUR 6362 also alleged that the advertisements were financed from funds Denham transferred from Jeff Denham for State Senate ("State Committee") to RB.

1 Respondents stated that RB, not the Tribe, paid for the advertisements and asserted that
2 no violations of the Act occurred because the advertisements do not contain express advocacy or
3 its functional equivalent.

4 It appears that the radio and television ads at issue meet the definition of “coordinated
5 communications,” but qualify for the safe harbor for candidate charitable solicitations under
6 11 C.R.R. § 109.21(g) because: (1) the ads do not promote, support, attack, or oppose (“PASO”)
7 Denham or any other Federal candidate(s); (2) RB, the organization for which the funds were
8 solicited, is a 501(c)(3) tax-exempt organization as described at 11 C.F.R. § 300.65; and (3) the
9 funds appeared to have been raised solely for charitable purposes, *i.e.*, donations to RB, a
10 501(c)(3) organization, to benefit the Gold Star Project. Accordingly, the Commission found no
11 reason to believe that Jeff Denham and Denham for Congress and David Bauer, in his official
12 capacity as treasurer, accepted and received prohibited in-kind corporate contributions resulting
13 from coordinated communications in violation of 2 U.S.C. § 441b(a); and no reason to believe
14 that Denham for Congress and David Bauer, in his official capacity as treasurer, failed to report
15 such contributions in violation of 2 U.S.C. § 434(b).

16 The Commission considered the allegations that the advertisements were financed from
17 funds Denham transferred from his State Committee to RB, but was equally divided on whether
18 to find reason to believe that Jeff Denham and Denham for Congress and David Bauer, in his
19 official capacity as Treasurer, violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) in
20 connection with the transfer of non-federal funds to finance electioneering communications.
21 The Commission will issue one or more Statements of Reasons setting forth the basis for the
22 decision as to these allegations.

23

1 **II. FACTUAL AND LEGAL ANALYSIS**

2
3 **A. Factual Background**

4
5 In 2010, Jeff Denham was both a California State Senator, representing the 12th District,
6 and a candidate for the U.S. House of Representatives for California's 19th Congressional
7 District. Denham did not run for re-election to the State Senate. Denham won the June 8, 2010,
8 Republican primary and the November 2, 2010, general election.

9 In the two months before the June 8 primary, Denham's State Committee made transfers
10 totaling \$225,000 to RB, an entity organized under Section 501(c)(3) of the Internal Revenue
11 Code (26 U.S.C. § 501(c)(3)). RB honors veterans killed in action, and it organizes ceremonies
12 and events to honor deceased servicemembers and their families. *See*
13 <http://www.rememberingthebrave.org>. The transfers included a \$25,000 donation made on April
14 12, 2010, and three loans, which the Committee forgave: a \$100,000 loan made on April 19,
15 2010, a \$50,000 loan made on May 12, 2010, and a \$50,000 loan on May 25, 2010.¹

16 Eleven days before the June 8 primary, a benefit concert was held at the Chukchansi Gold
17 Resort & Casino, in Coarsegold, California, which is in the 19th Congressional District. The
18 concert, sponsored by RB and featuring country and western music performer Phil Vassar, was
19 advertised on radio, television, and the internet as a benefit concert to raise donations for Project
20 Gold Star—a program administered by the California Department of Veteran Affairs to raise
21 private donations to pay the costs of a specialized license plate program for the families of U.S.
22 military personnel killed while serving on active duty. Several of the advertisements promoting
23 the concert featured Denham. RB asked Denham to act as spokesperson and to appear in the ads

¹ See <http://cal-access.sos.ca.gov/PDFGen/pdfgen.prg?filingid=1521583&amendid=0> and <http://cal-access.sos.ca.gov/PDFGen/pdfgen.prg?filingid=1568050&amendid=0>.

1 because of his "long-standing association with veterans' issues and the Gold Star Project
2 legislation." Denham Response at 2. Denham, an Air Force veteran, was Chairman of the
3 Veterans' Affairs Committee while he was a California State Senator and was a coauthor of
4 Senate Bill 1455, the California Gold Star Family License Plate bill. Project Gold Star was
5 signed into law in September 2008.

6 Complainant in MUR 6289 provided a "Transcript of Coordinated Ads," which contains
7 a link to the television ad as posted on the internet at <http://www.rememberthebrave.com/>, a
8 transcript of the radio ad, and a list of seven TV and radio stations that aired the ads. The ads
9 aired in May 2010, up to the date of the event.

10 **TRANSCRIPT OF RADIO AD:**

11 **ANNOUNCER:** Join country superstar Phil Vassar for a one-night Remember
12 the Brave benefit concert, Friday May 28th Memorial weekend at Chukchansi
13 Gold Resort and Casino. Veteran Affairs Committee Chairman Senator Jeff
14 Denham.

15
16 **JEFF DENHAM:** As a veteran, I know the sacrifices of our servicemen and
17 women, and the sacrifice shared by their loved ones who pray for their safe return.
18 But some of them don't make it, their families then become Gold Star families.
19 This event will raise funds for Gold Star families and the Gold Star project as
20 recognition for their ultimate sacrifice. Please join us at our benefit concert on
21 May 28th Memorial weekend. If you can't make it, go to Remember the Brave
22 dot com to learn more and to make your tax-deductible donations. Remember,
23 every dollar counts.

24
25 I'm Senator Jeff Denham.

26
27 **ANNOUNCER:** Join Phil Vassar and Jeff Denham at the Remember the Brave
28 benefit concert. For tickets go to Chukchansi Gold Resort and Casino or visit
29 Ticketmaster dot com.
30

TRANSCRIPT OF TELEVISION AD (as posted on the internet) :
<http://www.rememberthebrave.com/>

PAGE 1: At top of page is the logo of Remembering the Brave, followed by Benefit Concert. Underneath it is "Phil Vassar" followed by the date (May 28th) and location of the event (Chukchansi Gold Resort & Casino), a photo of a sample specialized license plate next to a statement: "Proceeds benefit the California Department of Veteran Affairs Project Gold Star, a link to the California Department of Veteran Affairs website, and two buttons: "Buy Tickets" and "Donate."

PAGE 2: (Video)(30 seconds):

- **First clip:** Phil Vassar live concert and a voiceover "Join country superstar Phil Vassar for a one night benefit concert" while the following words flash on the screen "Remember the Brave" "Chukchansi Gold Resort and Casino" and "May 28th".
- **Second clip:** Denham with 3 other individuals, two of whom appear to be veterans. Denham is standing in the middle of the group while the words "Senator Jeff Denham, Chairman, Veterans Affairs" flash on the screen. Denham then says "As a veteran, I know the sacrifices of our service men and women. A sacrifice shared by their loved ones who pray for their safe return. But some don't make it. Their families then become Gold Star Families."
- **Third clip:** Phil Vassar concert and a voiceover "Join Phil Vassar at the Remember the Brave benefit concert. Visit Ticketmaster dot com for your tickets today" while the words "May 28th" "Chukchansi Gold Resort and Casino" and "Ticketmaster.com" flash on the screen.
- **Fourth clip:** same shot of Denham with the veterans and Denham saying "If you can't make it, go to Rememberthebrave.com to learn more" while the words "Rememberthebrave.com" flash on the screen.

TRANSCRIPT OF INTERNET AD:

- **Left side of screen:** Photo of Denham and the words "State Senator Jeff Denham, Veterans' Affairs Committee" under the photo.
- **Right Side of screen:** Message "As a veteran, I know the sacrifices of our service men and women. A sacrifice shared by their loved ones who pray for their safe return. But some don't make it. Their families then become Gold Star Families. We're raising funds to make available commemorative license plates for these families as recognition for their sacrifice. Please join us at our benefit concert on May 28th. If you can't attend, I urge you to learn more [link] about these families and make a tax-deductible contribution [link]. Remember, every dollar counts. Learn More: California Department of Veteran Affairs – Project Gold Star [link]."
- **Bottom of screen:** rememberthebrave.com is a project of Remembering The Brave Foundation, a 501(c)(3) not-for-profit organization. For more information,

1 please visit www.RememberingTheBrave.org. Contributions and donations are
2 tax deductible and directly benefit the Remembering the Brave Foundation.
3

4 RB sponsored the benefit concert, the proceeds of which were donated to Project Gold
5 Star. Denham Response at 2. It also appears that RB, not the Tribe, produced, aired, and paid
6 for the radio, television, and internet ads. *Id.* Documentation submitted with the complaint in
7 MUR 6362 indicates that Gilliard, Blanning & Associates ("GBA") and Alamance Advisors
8 handled the media buy for the concert on behalf of its client, RB. *See* Emails between Genet
9 Slagle (media buyer with GBA) to Matt Rosenfeld (President/General Manager for KSEE-
10 NBC24, KSEE Weather Plus, and LATV la alternativo), dated April 29, 2010, regarding Gold
11 Star Families Proposal. It also appears that GBA and Alamance Advisors handled the media
12 buys for the Denham for Congress campaign in 2010.² *See* Emails from Genet Slagle to Donald
13 Osika, dated January 29, 2010. The Denham response did not specify how much was spent on
14 the ads, but does not dispute the \$100,000-\$200,000 amount mentioned in the complaint. It
15 appears that RB raised a total of \$105,440.24, about a third of the total amount raised (\$300,000)
16 for Project Gold Star.³

17 The response indicates that the ads aired during May 2010, up until the May 28th date of
18 the benefit concert, which was within thirty (30) days of the California Congressional primary
19 election in which Denham appeared as a candidate. *Id.* at 4. However, the response argued the

² The Denham Federal Committee's 2010 April Quarterly Report reflects disbursements to GBA and to Alamance for broadcast advertising.

³ The California Department of Veteran Affairs announced that Project Gold Star had met its fundraising goal. *See* <http://www.cdva.ca.gov/newhome.aspx>. RB posted a letter from the Department of Veteran Affairs thanking it for its \$105,440.24 donation in support of Project Gold Star. *See* <http://www.rememberingthebrave.org/news/>. On the letter is a handwritten note, indicating that this was the single largest donation received. *Id.* In a news release announcing that the Gold Star Project had raised \$300,000 and that the Gold Star plate initiative had passed, RB acknowledges that it "together with Senator Denham, his supporters, and other contributors ... raised approximately one-third of the funds needed to get the license plate initiative passed." *Id.*

1 concert was scheduled for May 28th because it was close to Memorial Day, an appropriate date
2 on which to hold an event related to veteran/military issues and causes, and not because May 28
3 was close to the primary. *Id.* at 6. The response also stated that the ads aired over a geographic
4 area around the Casino where the concert was held and included Denham's State Senate district,
5 the 19th Congressional District, and areas beyond. *Id.* at 4. Finally, the response acknowledged
6 that the ads could be received by more than 50,000 people within the 19th Congressional District.
7 *Id.*

8 **B. Coordinated Communications**
9

10 The Act subjects contributions and expenditures to certain restrictions, limitations, and
11 reporting requirements. *See generally* 2 U.S.C. §§ 441a, 434b. Contributions can be monetary
12 or "in-kind." In-kind contributions include an expenditure made by any person "in cooperation,
13 consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized
14 political committees, or their agents," and are subject to the same restrictions and reporting
15 requirements as other contributions. 2 U.S.C. § 441a(a)(7)(A) and (B)(i); 11 C.F.R.
16 §§ 100.52(d)(1), 109.21(b). The Commission's regulations at 11 C.F.R. § 109.21 provide that
17 coordinated communications constitute in-kind contributions from the party paying for such
18 communications to the candidate, the candidate's authorized committee, or the political party
19 committee which coordinates the communication. A corporation is prohibited from making any
20 contribution in connection with a Federal election. 2 U.S.C. § 441b(a).

21 A communication is coordinated if it is paid for by someone other than the candidate or
22 the candidate's authorized committee (or the political party committee, where applicable); it
23 satisfies one or more content standards; and it satisfies one or more conduct standards. All three
24 prongs must be met for a communication to be considered coordinated. 11 C.F.R. § 109.21. The

1 Commission's regulations exempt from the definition of "coordinated communication" a public
2 communication in which a Federal candidate solicits funds for organizations as permitted by
3 11 C.F.R. § 300.65, provided that the public communication does not PASO the soliciting
4 candidate or that candidate's opponent(s) in the election. *See* 11 C.F.R. § 109.21(g)(2). Federal
5 candidates and officeholders may solicit funds for tax-exempt organizations as described in
6 26 U.S.C. § 501(c). 11 C.F.R. § 300.65.

7 The radio and television ads at issue meet all three prongs of the coordination test. The
8 payment prong is satisfied because there is information that the ads were paid for by RB,
9 someone other than the candidate, his authorized committee, or political party committee.
10 11 C.F.R. § 109.21(a)(1). The content prong is satisfied because the communications qualify as
11 public communications which "refer[] to a clearly identified House or Senate candidate that
12 [are] publicly distributed or otherwise publicly disseminated in the clearly identified candidate's
13 jurisdiction 90 days or fewer before the ...primary or preference election."⁴ 11 C.F.R.
14 § 109.21(c)(4)(i). The content prong is also satisfied because the ads meet the definition of
15 electioneering communications. 11 C.F.R. § 109.21(c)(1). The ads are electioneering
16 communications because they were publicly distributed on radio and television, refer to a clearly
17 identified candidate for Federal office, were publicly distributed within 30 days before the
18 primary election, and were targeted to the relevant electorate (the ads could be received by

⁴ A public communication includes broadcast communications. 2 U.S.C. § 431(22). It does not include internet communications, except for communications placed for a fee on another's Web site. 11 C.F.R. § 100.26. "Clearly identified" means the candidate's name or photograph appears, or "the identity of the candidate is otherwise apparent through an unambiguous reference." 2 U.S.C. § 431(18); 11 C.F.R. § 100.17.

1 50,000 or more persons in the district that Denham sought to represent (19th Congressional
2 District)).⁵ 11 C.F.R. § 100.29.

3 The conduct prong is satisfied if a candidate or candidate's committee assents to a request
4 or suggestion that the public communication be created, produced, or distributed, and that
5 request or suggestion came from the person paying for the communication. 11 C.F.R.
6 § 109.21(d)(1)(ii). The response acknowledged that RB requested that Denham act as the
7 spokesperson and to appear in the ads, which he did. Denham Response at 2. Because Denham
8 is an agent of his Committee, his actions are also imputed to his Committee. 11 C.F.R.
9 §§ 109.3(b)(1), (2); 109.21(a), (d)(1)(ii).

10 Though the television and radio ads meet the definition of "coordinated
11 communications," they qualify for the safe harbor for candidate charitable solicitations in
12 11 C.F.R. § 109.21(g)(2). This provision exempts from the definition of "coordinated
13 communications" public communications in which a Federal candidate solicits funds for certain
14 tax-exempt organizations as permitted by 11 C.F.R. § 300.65, provided that the public
15 communications do not PASO the soliciting candidate or that candidate's opponents in that
16 election. In this matter, Denham, a Federal candidate, appeared and/or spoke in broadcast radio
17 and television ads to solicit funds for RB, a 501(c)(3) organization, in support of Project Gold
18 Star. The available information indicates that RB is an organization described in 11 C.F.R.
19 § 300.65, and the solicitations for donations to RB complied with the requirements of 11 C.F.R.
20 § 300.65 because they appeared to have been for the purpose of raising funds for RB in support
21 of Project Gold Star. Thus, it appears that these communications are exempt from the definition

⁵ RB's internet ad is not included in this analysis because it is exempt from the definition of electioneering communications. 11 C.F.R. § 100.29(c)(1).

1 of “coordinated communications” if they did not promote or support Denham and did not attack
2 or oppose his opponent.

3 It does not appear that the ads at issue promote or support Denham or attack or oppose
4 any of his opponents. Although the Commission has not defined the term “promote, support,
5 attack, or oppose,” it has provided some guidance in advisory opinions as to what might
6 constitute PASO of a candidate. *See* AO 2009-26 (Coulson) (concluding that a state officeholder
7 could use non-federal funds to pay for communication that did not PASO a candidate for Federal
8 office because the communication was solely part of the State officeholder’s duties, did not
9 solicit donations, nor did it expressly advocate the candidate’s election or the defeat of her
10 opponents); *see also* AOs 2007-34 (Jackson), 2007-21 (Holt), 2006-10 (Echostar) and 2003-25
11 (Weinzapfel) (holding that the mere identification of an individual who is a Federal candidate
12 does not, in itself, promote, support, attack or oppose that candidate).

13 The only clearly identified candidate in the ads is Denham, who is identified as a veteran,
14 a State Senator, and as Chairman of the Veterans’ Affairs Committee, not as a candidate for
15 Federal office. The ads do not contain express advocacy or its functional equivalent, and do not
16 contain references to any election or political party. Given the above, it does not appear that the
17 ads PASO’d Denham or any of his opponents.

18 Neither the timing of the benefit concert nor the involvement of the Denham campaign
19 consultants/media buyer/supporters in the planning of the benefit concert and ads would appear
20 to prevent the application of the safe harbor for charitable solicitations. *See* Explanation and
21 Justification for Final Rules for Safe Harbor for Endorsements and Solicitations by Federal
22 Candidates (11 C.F.R. § 109.21(g)) 71 Fed. Reg. 33201-33202 (Jun. 8, 2006) (stating that the
23 “safe harbor applies regardless of the timing and proximity to an election ... of the solicitation

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1 and [w]hen the safe harbor is applicable, the . . . soliciting candidate (and the candidate's agents)
2 may be involved in the development of the communication, in determining the content of the
3 communication, as well as determining the means or mode and timing or frequency of the
4 communication.""); *See also*, AO 2006-10 (Echostar).

5 Based on the above, the ads at issue were not coordinated communications. Accordingly,
6 the Commission found no reason to believe that Jeff Denham and Denham for Congress and
7 David Bauer, in his official capacity as treasurer, accepted and received prohibited in-kind
8 corporate contributions resulting from coordinated communications in violation of 2 U.S.C.
9 § 441b(a); and no reason to believe that Denham for Congress and David Bauer, in his official
10 capacity as treasurer, failed to report such contributions in violation of 2 U.S.C. § 434(b).

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Remembering the Brave Foundation MUR: 6362

I. INTRODUCTION

This matter was generated by two complaints filed with the Federal Election Commission ("the Commission"), one by Sean Fox and another by Tal Cloud and Mike Der Manuel, Jr., which were designated as MURs 6289 and 6362, respectively. See 2 U.S.C. § 437(g)(a)(1). The complaints concern ads broadcast by Remembering the Brave Foundation ("RB"), a section 501(c)(3) charitable organization, to promote a May 28, 2010, benefit concert in support of a program in California to create specialized license plates for families of military personnel killed on active duty. The ads featured Jeff Denham, a California State Senator and a candidate in the primary election for the 19th Congressional District in California, and were disseminated within 30 days of the California Congressional primary election on June 8, 2010. The concert was held at the Chukchansi Gold Resort & Casino.

The complaints in these two matters involve allegations that the radio and television advertisements promoting the concert were electioneering communications that were coordinated with Denham for Congress and David Bauer, in his official capacity as treasurer, ("Federal Committee") and were not disclosed to the Federal Election Commission ("the Commission"), in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). Complainants in MUR 6362 also alleged that the advertisements were financed from funds Denham transferred from Jeff Denham for State Senate ("State Committee") to RB.

1 RB acknowledged that it paid for the advertisements and asserted that no
2 violations of the Act occurred because the advertisements do not contain express
3 advocacy or its functional equivalent.

4 It appears that the radio and television ads at issue meet the definition of
5 "coordinated communications," but qualify for the safe harbor for candidate charitable
6 solicitations under 11 C.F.R. § 109.21(g) because: (1) the ads do not promote, support,
7 attack, or oppose ("PASO") Denham or any other Federal candidate(s); (2) RB, the
8 organization for which the funds were solicited, is a 501(c)(3) tax-exempt organization as
9 described at 11 C.F.R. § 300.65; and (3) the funds appeared to have been raised solely for
10 charitable purposes, *i.e.*, donations to RB, a 501(c)(3) organization to benefit the Gold
11 Star Project. Accordingly, the Commission found no reason to believe that Remembering
12 the Brave Foundation made a prohibited in-kind corporate contribution resulting from
13 coordinated communications in violation of 2 U.S.C. § 441b(a).

14 With regard to the allegations that the advertisements were electioneering
15 communications, the Commission was equally divided on whether to find reason to
16 believe that Remembering the Brave Foundation violated 2 U.S.C. §§ 434(f) and 441d,
17 by failing to file disclosure reports for these communications and failing to include
18 proper disclaimers on the communications. The Commission will issue one or more
19 Statements of Reasons setting forth the basis for its decision regarding these allegations.
20

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 In 2010, Jeff Denham was both a California State Senator, representing the 12th
4 District, and a candidate for the U.S. House of Representatives for California's 19th
5 Congressional District. Denham did not run for re-election to the State Senate. Denham
6 won the June 8, 2010, Republican primary and the November 2, 2010, general election.

7 In the two months before the June 8 primary, Denham's State Committee made
8 transfers totaling \$225,000 to RB, an entity organized under Section 501(c)(3) of the
9 Internal Revenue Code (26 U.S.C. § 501(c)(3)). RB honors veterans killed in action, and
10 it organizes ceremonies and events to honor deceased servicemembers and their families.
11 See <http://www.rememberingthebrave.org/>. The transfers included a \$25,000 donation
12 made on April 12, 2010, and three loans, which the Committee forgave: a \$100,000 loan
13 made on April 19, 2010, a \$50,000 loan made on May 12, 2010, and a \$50,000 loan on
14 May 25, 2010.¹

15 Eleven days before the June 8 primary, a benefit concert was held at the
16 Chukchansi Gold Resort & Casino, in Coarsegold, California, which is in the 19th
17 Congressional District. The concert, sponsored by RB and featuring country and western
18 music performer Phil Vassar, was advertised on radio, television, and the internet as a
19 benefit concert to raise donations for Project Gold Star—a program administered by the
20 California Department of Veteran Affairs to raise private donations to pay the costs of a
21 specialized license plate program for the families of U.S. military personnel killed while
22 serving on active duty. Several of the advertisements promoting the concert featured

¹ See <http://cal-access.sos.ca.gov/PDFGen/pdfgen.prg?filingid=1521503&amendid=0> and <http://cal-access.sos.ca.gov/PDFGen/pdfgen.prg?filingid=1568050&amendid=0>.

1 Denham. RB asked Denham to act as spokesperson and to appear in the ads because of
2 his "long-standing association with veterans' issues and the Gold Star Project
3 legislation." Response at 2. Denham, an Air Force veteran, was Chairman of the
4 Veterans' Affairs Committee while he was a California State Senator and was a coauthor
5 of Senate Bill 1455, the California Gold Star Family License Plate bill. Project Gold Star
6 was signed into law in September 2008.

7 Complainant in MUR 6289 provided a "Transcript of Coordinated Ads," which
8 contains a link to the television ad as pasted on the internet at
9 <http://www.rememberthebrave.com/>, a transcript of the radio ad, and a list of seven TV
10 and radio stations that aired the ads. The ads aired in May 2010, up to the date of the
11 event.

12 **TRANSCRIPT OF RADIO AD:**

13 **ANNOUNCER:** Join country superstar Phil Vassar for a one-night
14 Remember the Brave benefit concert, Friday May 28th Memorial weekend
15 at Chukchansi Gold Resort and Casino. Veteran Affairs Committee
16 Chairman Senator Jeff Denham.

17
18 **JEFF DENHAM:** As a veteran, I know the sacrifices of our servicemen
19 and women, and the sacrifice shared by their loved ones who pray for their
20 safe return. But some of them don't make it, their families then become
21 Gold Star families. This event will raise funds for Gold Star families and
22 the Gold Star project as recognition for their ultimate sacrifice. Please
23 join us at our benefit concert on May 28th Memorial weekend. If you can't
24 make it, go to Remember the Brave dot com to learn more and to make
25 your tax-deductible donations. Remember, every dollar counts.

26
27 I'm Senator Jeff Denham.

28
29 **ANNOUNCER:** Join Phil Vassar and Jeff Denham at the Remember the
30 Brave benefit concert. For tickets go to Chukchansi Gold Resort and
31 Casino or visit Ticketmaster dot com.
32

TRANSCRIPT OF TELEVISION AD (as posted on the internet) :
<http://www.rememberthebrave.com/>

PAGE 1: At top of page is the logo of Remembering the Brave, followed by Benefit Concert. Underneath it is "Phil Vassar" followed by the date (May 28th) and location of the event (Chukchansi Gold Resort & Casino), a photo of a sample specialized license plate next to a statement: "Proceeds benefit the California Department of Veteran Affairs Project Gold Star, a link to the California Department of Veteran Affairs website, and two buttons: "Buy Tickets" and "Donate."

PAGE 2: (Video)(30 seconds):

- **First clip:** Phil Vassar live concert and a voiceover "Join country superstar Phil Vassar for a one night benefit concert" while the following words flash on the screen "Remember the Brave" "Chukchansi Gold Resort and Casino" and "May 28th".
- **Second clip:** Denham with 3 other individuals, two of whom appear to be veterans. Denham is standing in the middle of the group while the words "Senator Jeff Denham, Chairman, Veterans Affairs" flash on the screen. Denham then says "As a veteran, I know the sacrifices of our service men and women. A sacrifice shared by their loved ones who pray for their safe return. But some don't make it. Their families then become Gold Star Families."
- **Third clip:** Phil Vassar concert and a voiceover "Join Phil Vassar at the Remember the Brave benefit concert. Visit Ticketmaster dot com for your tickets today" while the words "May 28th" "Chukchansi Gold Resort and Casino" and "Ticketmaster.com" flash on the screen.
- **Fourth clip:** same shot of Denham with the veterans and Denham saying "If you can't make it, go to Rememberthebrave.com to learn more" while the words "Rememberthebrave.com" flash on the screen.

TRANSCRIPT OF INTERNET AD:

- **Left side of screen:** Photo of Denham and the words "State Senator Jeff Denham, Veterans' Affairs Committee" under the photo.
- **Right Side of screen:** Message "As a veteran, I know the sacrifices of our service men and women. A sacrifice shared by their loved ones who pray for their safe return. But some don't make it. Their families then become Gold Star Families. We're raising funds to make available commemorative license plates for these families as recognition for their sacrifice. Please join us at our benefit concert on May 28th. If you can't attend, I urge you to learn more [link] about these families and make a tax-deductible contribution [link]. Remember, every dollar counts. Learn

1 More: California Department of Veteran Affairs – Project Gold Star
2 [link].
3 • Bottom of screen: rememberthebrave.com is a project of Remembering
4 The Brave Foundation, a 501(c)(3) not-for-profit organization. For more
5 information, please visit www.RememberingTheBrave.org. Contributions
6 and donations are tax deductible and directly benefit the Remembering the
7 Brave Foundation.
8
9 RB sponsored the benefit concert, the proceeds of which were donated to Project
10 Gold Star. Response at 2. RB also stated that it, not the Tribe, produced, aired, and paid
11 for the radio, television, and internet ads. *Id.* Documentation submitted with the
12 complaint in MUR 6362 indicates that GBA and Alamance Advisors handled the media
13 buy for the concert on behalf of its client, RB. *See* Emails between Genet Slagle (media
14 buyer with GBA) to Matt Rosenfeld (President/General Manager for KSEE-NBC24,
15 KSEE Weather Plus, and LATV la alternativo), dated April 29, 2010, regarding Gold
16 Star Families Proposal. It also appears that GBA and Alamance Advisors handled the
17 media buys for the Denham for Congress campaign in 2010.² *See* Emails from Genet
18 Slagle to Donald Osika, dated January 29, 2010. The response did not specify how much
19 was spent on the ads, but does not dispute the \$100,000-\$200,000 amount mentioned in
20 the complaint. It appears that RB raised a total of \$105,440.24, about a third of the total
21 amount raised (\$300,000) for Project Gold Star.³

² The Denham Federal Committee's 2010 April Quarterly Report reflects disbursements to GBA and to Alamance for broadcast advertising.

³ The California Department of Veteran Affairs announced that Project Gold Star had met its fundraising goal. *See* <http://www.cdva.ca.gov/newhome.aspx>. RB posted a letter from the Department of Veteran Affairs thanking it for its \$105,440.24 donation in support of Project Gold Star. *See* <http://www.rememberingthebrave.org/news/>. On the letter is a handwritten note, indicating that this was the single largest donation received. *Id.* In a news release announcing that the Gold Star Project had raised \$300,000 and that the Gold Star plate initiative had passed, RB acknowledges that it "together with Senator Denham, his supporters, and other contributors ... raised approximately one-third of the funds needed to get the license plate initiative passed." *Id.*

1 RB acknowledged that the ads aired during May 2010, up until the May 28th date
2 of the benefit concert, which was within thirty (30) days of the California Congressional
3 primary election in which Denham appeared as a candidate. *Id.* at 4. However, the
4 response argued the concert was scheduled for May 28th because it was close to
5 Memorial Day, an appropriate date on which to hold an event related to veteran/military
6 issues and causes, and not because May 28 was close to the primary. *Id.* at 6. The
7 response also stated that the ads aired over a geographic area around the Casino where
8 the concert was held and included Denham's State Senate district, the 19th Congressional
9 District, and areas beyond. *Id.* at 4. Finally, the response acknowledged that the ads
10 could be received by more than 50,000 people within the 19th Congressional District. *Id.*

11 **B. Coordinated Communications**
12

13 The Act subjects contributions and expenditures to certain restrictions,
14 limitations, and reporting requirements. *See generally* 2 U.S.C. §§ 441a, 434b.
15 Contributions can be monetary or "in-kind." In-kind contributions include an
16 expenditure made by any person "in cooperation, consultation, or concert, with, or at the
17 request or suggestion of, a candidate, his authorized political committees, or their
18 agents," and are subject to the same restrictions and reporting requirements as other
19 contributions. 2 U.S.C. § 441a(a)(7)(A) and (B)(i); 11 C.F.R. §§ 100.52(d)(1), 109.21(b).
20 The Commission's regulations at 11 C.F.R. § 109.21 provide that coordinated
21 communications constitute in-kind contributions from the party paying for such
22 communications to the candidate, the candidate's authorized committee, or the political
23 party committee which coordinates the communication. A corporation is prohibited from
24 making any contribution in connection with a Federal election. 2 U.S.C. § 441b(a).

1 A communication is coordinated if it is paid for by someone other than the
2 candidate or the candidate's authorized committee (or the political party committee,
3 where applicable); it satisfies one or more content standards; and it satisfies one or more
4 conduct standards. All three prongs must be met for a communication to be considered
5 coordinated. 11 C.F.R. § 109.21. The Commission's regulations exempt from the
6 definition of "coordinated communication" a public communication in which a Federal
7 candidate solicits funds for organizations as permitted by 11 C.F.R. § 300.65, provided
8 that the public communication does not PASO the soliciting candidate or that candidate's
9 opponent(s) in the election. *See* 11 C.F.R § 109.21(g)(2). Federal candidates and
10 officeholders may solicit funds for tax-exempt organizations as described in 26 U.S.C.
11 § 501(c). 11 C.F.R. § 300.65.

12 The radio and television ads at issue meet all three prongs of the coordination test.
13 The payment prong is satisfied because there is information that the ads were paid for by
14 RB, someone other than the candidate, his authorized committee, or political party
15 committee. 11 C.F.R. § 109.21(a)(1). The content prong is satisfied because the
16 communications qualify as public communications which "refer[] to a clearly identified
17 House or Senate candidate that [are] publicly distributed or otherwise publicly
18 disseminated in the clearly identified candidate's jurisdiction 90 days or fewer before the
19 ...primary or preference election."⁴ 11 C.F.R. § 109.21(c)(4)(i). The content prong is also
20 satisfied because the ads meet the definition of electioneering communications. 11 C.F.R.
21 § 109.21(c)(1). The ads are electioneering communications because they were publicly

⁴ A public communication includes broadcast communications. 2 U.S.C. § 431(22). It does not include internet communications, except for communications placed for a fee on another's Web site. 11 C.F.R. § 100.26. "Clearly identified" means the candidate's name or photograph appears, or "the identity of the candidate is otherwise apparent through an unambiguous reference." 2 U.S.C. § 431(18); 11 C.F.R. § 100.17.

1 distributed on radio and television, refer to a clearly identified candidate for Federal
2 office, were publicly distributed within 30 days before the primary election, and were
3 targeted to the relevant electorate (the ads could be received by 50,000 or more persons in
4 the district that Denham sought to represent (19th Congressional District)).⁵ 11 C.F.R.
5 § 100.29.

6 The conduct prong is satisfied if a candidate or candidate's committee assents to a
7 request or suggestion that the public communication be created, produced, or distributed,
8 and that request or suggestion came from the person paying for the communication.

9 11 C.F.R. § 109.21(d)(1)(ii). The response acknowledged that RB requested that
10 Denham act as the spokesperson and to appear in the ads, which he did. Response at 2.
11 Because Denham is an agent of his Committee, his actions are also imputed to his
12 Committee. 11 C.F.R. §§ 109.3(b)(1) and (2); 109.21(a), (d)(1)(ii).

13 Though the television and radio ads meet the definition of "coordinated
14 communications," they qualify for the safe harbor for candidate charitable solicitations in
15 11 C.F.R. § 109.21(g)(2). This provision exempts from the definition of "coordinated
16 communications" public communications in which a Federal candidate solicits funds for
17 certain tax-exempt organizations as permitted by 11 C.F.R. § 300.65, provided that the
18 public communications do not PASO the soliciting candidate or that candidate's
19 opponents in that election. In this matter, Denham, a Federal candidate, appeared and/or
20 spoke in broadcast radio and television ads to solicit funds for RB, a 501(c)(3)
21 organization, in support of Project Gold Star. The available information indicates that
22 RB is an organization described in 11 C.F.R. § 300.65, and the solicitations for donations

⁵ RB's internet ads are not included in this analysis because they are exempt from the definition of electioneering communications. 11 C.F.R. § 100.29(c)(1).

1 to RB complied with the requirements of 11 C.F.R. § 300.65 because they appeared to
2 have been for the purpose of raising funds for RB in support of Project Gold Star. Thus,
3 it appears that these communications are exempt from the definition of “coordinated
4 communications” if they did not promote or support Denham and did not attack or
5 oppose his opponent.

6 It does not appear that the ads at issue promote or support Denham or attack or
7 oppose any of his opponents. Although the Commission has not defined the term
8 “promote, support, attack, or oppose,” it has provided some guidance in advisory
9 opinions as to what might constitute PASO of a candidate. See AO 2009-26 (Coulson)
10 (concluding that a state officeholder could use non-federal funds to pay for
11 communication that did not PASO a candidate for Federal office because the
12 communication was solely part of the State officeholder’s duties, did not solicit
13 donations, nor did it expressly advocate the candidate’s election or the defeat of her
14 opponents); see also AOs 2007-34 (Jackson), 2007-21 (Holt), 2006-10 (Echostar) and
15 2003-25 (Weinzapfel) (holding that the mere identification of an individual who is a
16 Federal candidate does not, in itself, promote, support, attack or oppose that candidate).

17 The only clearly identified candidate in the ads is Denham, who is identified as a
18 veteran, a State Senator, and as Chairman of the Veterans’ Affairs Committee, not as a
19 candidate for Federal office. The ads do not contain express advocacy or its functional
20 equivalent, and do not contain references to any election or political party. Given the
21 above, it does not appear that the ads PASO’d Denham or any of his opponents.

22 Neither the timing of the benefit concert nor the involvement of the Denham
23 campaign consultants/media buyer/supporters in the planning of the benefit concert and

MUR 6362 (Remembering the Brave)
Factual and Legal Analysis

1 ads would appear to prevent the application of the safe harbor for charitable solicitations.
2 *See Explanation and Justification for Final Rules for Safe Harbor for Endorsements and*
3 *Solicitations by Federal Candidates (11 C.F.R. § 109.21(g)) 71 Fed. Reg. 33201-33202*
4 *(Jun. 8, 2006) (stating that the “safe harbor applies regardless of the timing and proximity*
5 *to an election ... of the solicitation and [w]hen the safe harbor is applicable, the . . .*
6 *soliciting candidate (and the candidate’s agents) may be involved in the development of*
7 *the communication, in determining the content of the communication, as well as*
8 *determining the means or mode and timing or frequency of the communication.”); See*
9 *also, AO 2006-10 (Echostar).*

10 Based on the above, the ads at issue were not coordinated communications.
11 Accordingly, the Commission found no reason to believe that Remembering the Brave
12 Foundation made a prohibited in-kind corporate contribution resulting from coordinated
13 communications in violation of 2 U.S.C. § 441b(a).

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

**RESPONDENT: Picayune Rancheria of the Chukchansi Indians/
Chukchansi Tribal Government**

MUR: 6362

I. INTRODUCTION

This matter was generated by two complaints filed with the Federal Election Commission, one by Sean Fox, and another by Tal Cloud and Mike Der Mamouel, Jr., respectively, which were designated as MURs 6289 and 6362 See 2 U.S.C. § 437g(a)(1).

The complaints alleged that radio and television advertisements for a May 28, 2010, benefit concert for the Remembering the Brave Foundation ("RB") featured Jeff Denham, a California State Senator and a candidate in the primary election for the 19th Congressional District in California, and were disseminated within 30 days of the California Congressional primary election on June 8, 2010. These ads were allegedly financed from funds Denham transferred from Jeff Denham for State Senate ("State Committee") to RB. The concert was held at the Chukchansi Gold Resort & Casino, which is owned and operated by the Picayune Rancheria of the Chukchansi Indians/the Chukchansi Tribal Government)("Tribe").

In MUR 6289, the complaint alleged that the advertisements promoting the benefit concert were coordinated electioneering communications, which were paid for by the Tribe, resulting in undisclosed contributions from the Tribe to Denham for Congress ("Federal Committee"). In MUR 6362, the complaint alleged that the same communications were coordinated with the Denham campaign and involved the Tribe and others. This complaint also alleged that the Tribe failed to disclose coordinated communications and independent expenditures made in connection with the benefit concert and/or Denham's Federal Committee, and may have done so to hide the true source of the funding. The Tribe filed a response to the

1 complaint in MUR 6362, stating that there is no basis for finding that it made coordinated
2 communications or otherwise violated the provisions of the Federal Election Campaign Act of
3 1971, as amended ("the Act").

4 As explained below, the Commission found no reason to believe that the Picayune
5 Rancheria of the Chukchansi Indians violated any provisions of the Act or Commission
6 regulations in connection with the allegations in this matter.

7 **II. FACTUAL AND LEGAL ANALYSIS**

8 **A. Factual Background**

9 In 2010, Jeff Denham was both a California State Senator, representing the 12th District,
10 and a candidate for the U.S. House of Representatives for California's 19th Congressional
11 District. Denham did not run for re-election to the State Senate. Denham won the June 8, 2010,
12 Republican primary and the November 2, 2010, general election.

13 Eleven days before the June 8 primary, a benefit concert was held at the Chukchansi Gold
14 Resort & Casino, in Coarsegold, California, which is in the 19th Congressional District. The
15 concert, sponsored by Remembering the Brave Foundation and featuring country and western
16 music performer Phil Vassar, was advertised on radio, television, and the internet as a benefit
17 concert to raise donations for Project Gold Star—a program administered by the California
18 Department of Veteran Affairs to raise private donations to pay the costs of a specialized license
19 plate program for the families of U.S. military personnel killed while serving on active duty.
20 Several of the advertisements promoting the concert featured Denham.

21 In its response, the Tribe acknowledged that it provided the venue for and distributed
22 promotional materials about the concert, but stated that none of its promotional materials referred
23 to Denham or to any candidate. The Tribe further stated that it made the following in-kind

1 donations to RB in support of the benefit concert: the use of its casino as the venue for the
2 concert, a newspaper strip ad with the Fresno Bee, rack cards for distribution, postcards for
3 distribution to Chukchansi guests, automated phone calls to Chukchansi guests, food vouchers
4 with the purchase of two tickets to the event, rooms and meals for performers, an email blast,
5 posters, and casino overhead announcements. *See Tribe's response* at 4-6. In addition, the Tribe
6 noted that several television and radio stations ran public service announcements promoting the
7 concert, which were provided without cost to the Tribe. *Id.* Finally, the Tribe asserted that it did
8 not pay for or distribute any promotional materials that referred to Denham or to any clearly
9 identified candidate, did not disseminate campaign materials prepared by the candidate, and did
10 not expressly advocate the election or defeat of a clearly identified candidate. *Id.* at 5. The Tribe
11 provided copies of its promotional materials, and none of the ads provided refer to Denham or to
12 any other clearly identified candidate.

13 **B. Coordinated Communications/Independent Expenditures**
14

15 The Act subjects contributions and expenditures to certain restrictions, limitations, and
16 reporting requirements. *See generally* 2 U.S.C. §§ 441a, 434b. Contributions can be monetary
17 or "in-kind." In-kind contributions include an expenditure made by any person "in cooperation,
18 consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized
19 political committees, or their agents," and are subject to the same restrictions and reporting
20 requirements as other contributions. 2 U.S.C. § 441a(a)(7)(A) and (B)(i); 11 C.F.R.
21 §§ 100.52(d)(1), 109.21(b). The Commission's regulations at 11 C.F.R. § 109.21 provide that
22 coordinated communications constitute in-kind contributions from the party paying for such
23 communications to the candidate, the candidate's authorized committee, or the political party

1 committee which coordinates the communication. A corporation is prohibited from making any
2 contribution in connection with a Federal election. 2 U.S.C. § 441b(a).

3 A communication is coordinated if it is paid for by someone other than the candidate or
4 the candidate's authorized committee (or the political party committee, where applicable); it
5 satisfies one or more content standards; and it satisfies one or more conduct standards. All three
6 prongs must be met for a communication to be considered coordinated. 11 C.F.R. § 109.21.

7 An independent expenditure is an expenditure for a communication which expressly
8 advocates the election or defeat of a clearly identified candidate and which is not made in
9 cooperation, consultation or concert with, or at the request or suggestion of, any candidate,
10 candidate's committee, party committee or their agents. 11 C.F.R. § 100.16.

11 Based on the Tribe's response and other available information, it does not appear that the
12 Tribe paid for ads featuring Denham, or that it made undisclosed coordinated communications
13 and/or independent expenditures in connection with the benefit concert and/or the Denham
14 campaign, as alleged in the complaints.

15 **C. Conclusion**

16 Accordingly, the Commission found no reason to believe that the Picayune Rancheria of
17 Chukchansi Indians/Chukchansi Tribal Government violated any provisions of the Act or
18 Commission regulations in connection with the allegations in this matter.